IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3874 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARVINKHAN @ FATEMAHMAD S/O. MAHMAD USMANKHAN GURJAR

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DUTTA for MR AR SHAIKH for Petitioner

MS HANSA B PUNANI AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 21/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Surat City, on 13th of January, 2005, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 15th of January, 2005 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration three crimes registered against the petitioner under Sections 323, 325, 333, 504, 506(2) of the Indian Penal Code. Secondly, the detaining authority took into consideration two in-camera statements, as recorded by the sponsoring authority on 08th of January, 2005 and verified by the detaining authority on 12th of January, 2005. The identity of the witnesses is not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. Out of three crimes registered against the petitioner. first was registered before Udhna Police Station on 3rd of January, 2005. It was alleged that the petitioner tried to stop one vehicle coming from Limbayat. When vehicle did not stop, the same was apprehended by the petitioner and the complainant was beaten after overtaking the vehicle. The second crime was registered before Limbayat Police Station on 9th of May, 2004, wherein it was alleged that the complainant was an Officer of Octroi Department of Surat and when he tried to stop the vehicle of the petitioner, the same was not stopped and thereafter the complainant was beaten by the petitioner. The third crime was registered bore Limbayat Police Station on 6th of November, 2003, wherein the complainant was beaten by the petitioner. The detaining authority considered exhaustively and thoroughly the investigation papers in the above three criminal cases and came to the conclusion that the petitioner was a habitual offender.

4. Out of two in-camera statements, the first witness referred to an incident occurred before 15 days of 8th of January, 2005. On that day, at about 9.30 p.m. the petitioner along with 3/4 accomplices approached the witness at his residence in one tempo vehicle. The witness was told that in the said tempo, the goods without paying octroi duty was loaded and the same was being apprehended by Octroi Department. The witness was directed to conceal said goods, which were yarn clothes,

at his residence. On refusal by the witness, the petitioner got excited and started abusing and beating the witness. Witness raised shouts for help, which attracted a crowd, but petitioner and his accomplices rushed towards the crowd with weapons and therefore people started running helter and skelter and public order was disturbed. The second witness also referred to an incident occurred before two months of recording of his statement. Like earlier incident, the witness was approached at about 9.00 p.m. at the place where the witness was doing his job. The witness was told by the petitioner that in tempo, which they had brought, goods without paying octroi, was loaded and, therefore, the witness was directed to conceal the said goods at his place of job. The witness refused and thereupon the petitioner got excited and started beating the witness. There were some accomplices with the petitioner. The witness raised shouts for the help, which attracted a crowd, and some of them attempted to rescue the witness, but the petitioner along with his accomplices rushed towards the crowd, so the people started running helter skelter. The public order was disturbed and area was terror stricken.

4. Relying upon the above material, the detaining authority came to the conclusion that the petitioner was engaged in anti-social and illegal activities of committing offences and dealing in goods without paying any octroi duty. The detaining authority also concluded that the petitioner was a dangerous person within the meaning of the PASA Act. The detaining authority also concluded that the petitioner was headstrong, ferocious and was in habit of administering threats to the innocent citizens and to beat them. The detaining authority came to the conclusion that the illegal activities of the petitioner were prejudicial to the maintenance of public order. The detaining authority also concluded that the dangerous activities of the petitioner were required to be prevented forthwith. After considering the remedies available against the petitioner in general law, the detaining authority reached to the subjective satisfaction that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority, therefore, passed the order of detention against the petitioner, which is under challenge in this petition.

5. Learned Advocate Ms.Banna Dutta for the petitioner and learned AGP Ms.Hansa B Punani for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record is

also taken into consideration.

6. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed.

7. To reach to the subjective satisfaction that the dangerous activities of the petitioner were prejudicial to the maintenance of public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

8. Referring to the three criminal cases filed against the petitioner under the Indian Penal Code and going through the investigation papers as placed on record, it is found that those three cases came to be filed against the detenu because he was found, during investigation, to have committed offences of theft. The act which is alleged in the criminal cases is offence under the Penal Statute of the country. However, merely filing cases under the Penal statute of the country, would not result in a conclusion that the activities of the petitioner were disturbing the public order. At the most, the petitioner might have committed breach of the provisions of law, for which the petitioner may be tried and punished if found guilty, but surely the act constituting the offence cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigating papers indicate that in the activities alleged through these cases, society at large or section of the society or community or particular community was involved. Therefore, these cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order.

9. Further, while referring to the in-camera statements, as recorded by the sponsoring authority and

verified by the detaining authority, it must be borne in mind that while reaching to the subjective satisfaction about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the petitioner and thereafter to come to the conclusion that such activities were capable of disturbing the public order. Two incidents, as narrated through in-camera statements, reveal individual disputes than to involve society at large or even disturbing the even tempo of the life of the community. The potentiality of the act alleged through in-camera statements, even from the bare reading of them, are not capable of disturbing the even tempo of life of the community or society at large or section of the society. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking them on their face value, those incidents, may be instances of disturbing law and order, which can be taken care of by general law and by no stretch of reasoning, such activities can be branded to be disturbing the public order.

10. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393. The Division Bench of this Court after considering many decisions of the Apex Court, observed in paras 20 and 21 as under :

"20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and Two. Devaki vs. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in Two. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, no action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from

maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

11. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and therefore the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

12. In the result, the petition is allowed. The order passed by Commissioner of Police, Surat City, on 13th of January, 2005, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Parvinkhan alias Fatemahamad S/o Mahamad Usmankhan Gurjar,is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair